

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PETER ANEKWE,

-against-

FREDERICK BERNSTEIN, Medical
Director of Green Haven Corr.
Fac.; ALBERT ACRISH, RN,
Medical Provider,

Defendants.

21-CV-11108 (LAP)

ORDER OF SERVICE

LORETTA A. PRESKA, Senior United States District Judge:

Plaintiff is currently incarcerated at Fishkill Correctional Facility and brings this action *pro se* alleging that Defendants violated his constitutional rights when he was incarcerated at Green Haven Correctional Facility. He names as defendants Medical Director Frederick Bernstein and Medical Provider Albert Acrish.

By order dated January 19, 2022, the Court granted Plaintiff's request to proceed *in forma pauperis* (IFP). (Dkt. no. 4.) Mr. Acrish was successfully served but Mr. Bernstein was not. On January 13, 2023, the New York State Attorney General provided an address at which Mr. Bernstein can be served. (Dkt. no. 16.) As set forth in this order, the Court directs service on Mr. Bernstein.

DISCUSSION

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. Walker v. Schult, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); see also 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed. The Court previously extended Plaintiff's time to serve the complaint by 90 days from the issuance of the summonses because Plaintiff could not serve his complaint before the Court reviewed the complaint and ordered that summonses be issued. (Dkt. No. 9.) The Court also cautioned Plaintiff that it was his responsibility to request a further extension of time if the complaint was not served within that time. (Id.) The summonses were issued on September 12, 2022. (Dkt. No. 10.) Plaintiff's 90-day extension has elapsed but he has neither completed service on Mr. Bernstein nor requested a further extension from the Court.

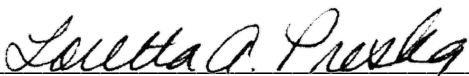
Nonetheless, Plaintiff is proceeding *pro se* and IFP and he has "provide[d] the information necessary to identify the

defendant.” Murray v. Pataki, 378 F. App’x 50, 52 (2d Cir. 2010). Because “the Marshals’ failure to effect service automatically constitutes ‘good cause’ for an extension of time within the meaning of Rule 4(m)” id. at 52, the Court extends Plaintiff’s time to serve Mr. Bernstein by a further 90 days from the date of this Order. Plaintiff is cautioned a final time that he must monitor the status of service and request an extension of time for service if the complaint is not served within that time. See Meilleur v. Strong, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service). Failure to do so may result in Mr. Bernstein’s dismissal as a defendant.

To allow Plaintiff to effect service on Mr. Bernstein through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for Mr. Bernstein. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Mr. Bernstein. Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

SO ORDERED.

Dated: New York, New York
January 18, 2023



LORETTA A. PRESKA
Senior United States District Judge

MR. BERNSTEIN'S SERVICE ADDRESS

1. Attn: Mark Richter (Litigation Director)
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